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Smart & Biggar 438 University Avenue Box 111, Suite 1500 Toronto, ON M5G 2K8 CANADA			JOO, JOSHUA	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/537,621	<b>Applicant(s)</b> NEIL ET AL.	
	<b>Examiner</b> JOSHUA JOO	<b>Art Unit</b> 2454	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11-17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11-17 and 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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### ***Detailed Action***

This Office action is in response to Applicant's communication filed on 09/22/2009.

Claims 1, 3-9, 11-17, 19-26 are pending for examination.

### **Response to Arguments**

Applicant's arguments filed 09/22/2009 have been fully considered but they are not persuasive.

Applicant argued that:

(1) Hofmeister does not show the amended feature of transmitting a message to a set of wireless communication devices indicating that a new application is available, wherein the set of wireless communication devices is a subset of an overall set of wireless communication devices in communication with the server.

In response, Examiner respectfully disagrees that Hofmeister does not teach the amended feature. Hofmeister teaches,

a) "The operating system 445 of the mobile device 445 receives the push message and may notify the user of its receipt. For example, once the push message is received, the operating system 445 may open a window or provide another indication on a user interface of the mobile device 415 with a message that a new application is available." (Paragraph 0053)

b) "Next, optional notification operation 705 presents the information from the application catalog read from the push message to a user of the mobile device for acceptance. That is, notification operation may open a window or provide another indication on a user interface of the mobile device with a message that a new application is available." (Paragraph 0072).

c) "a catalog server may periodically, or in response to some event, generate and send a push message to one or more mobile devices. In some cases, the catalog server may automatically generate a push message containing a list of categories for applications stored in the application catalog of the catalog server... Pre-cached information may include a list of categories for available applications, a list of popular applications such as a "Top Ten" list, a list of new or recently added applications (Paragraph 0083).

d) "One or even all of the pages may provide a "Send-to-a-Friend" option to send information about an application to one or more mobile devices." (Paragraph 0050).

e) the catalog server/application server 405 may receive a request for an application in a variety of ways. For example, the request may be automatically generated by the catalog server itself in

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response to some event happening. In other cases, a request may be received from a mobile device or other device accessing the application catalog database 435 via the website service module 440. (Paragraph 0051).

As described above, Hofmeister teaches of transmitting a message to mobile devices indicating that a new application is available. The message is transmitted to mobile devices, i.e. subset, that sent requests and/or to friend(s) of a user that requested the server to notify the friend(s) (Also see paragraph 0032). The message is sent to a subset of an overall set of mobile devices in communication with the server.

### **Specification**

The disclosure is objected to because of the following:

37 CFR 1.74 states,

When there are drawings, there shall be a brief description of the several views of the drawings and the detailed description of the invention shall refer to the different views by specifying the numbers of the figures, and to the different parts by use of reference letters or numerals (preferably the latter).

While the specification provides a brief description of figs. 20A-20LLL, the detailed description does not refer to the figures figs. 20A-20LLL.

Correction is required.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1, 3-6, 8-9, 11-14, 16-17, 19-22, 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hofmeister et al. US Publication #2005/0154759 (Hofmeister hereinafter).

As per claim 1, Hofmeister teaches the invention as claimed including a method of facilitating wireless communication device awareness of the availability of new or updated server-side applications, said method comprising:

in response to a new application being made available at a server, transmitting a message over a wireless connection to a set of wireless communication devices indicating that said new application is available (Paragraphs 53, 72, 83. Send message indicating new application to mobile device.),

wherein said set of wireless communications devices is a subset of an overall set of wireless communication devices in communication with said server (Paragraphs 0032, 0050-0051. Send message to devices that submitted request or indicated by “Send-to-a-Friend”).

As per claim 9, Hofmeister teaches the invention as claimed including a server comprising a processor and memory in communication with said processor storing machine-executable code adapting said server to:

in response to a new application being made available at said server, transmit a message over a wireless connection to a set of wireless communications devices indicating that said new application is available (Paragraphs 53, 72, 83. Send message indicating new application to mobile device.),

wherein said set of wireless communications devices is a subset of an overall set of wireless communication devices in communication with said server (Paragraphs 0032, 0050-0051. Send message to devices that submitted request or indicated by “Send-to-a-Friend”).

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As per claim 17, Hofmeister teaches the invention as claimed including a machine-readable medium storing machine-executable code for execution, which upon execution by a processor of a computing device, causes said device to:

in response to a new application being made available at a server, transmitting a message over a wireless connection to a set of wireless communications devices indicating that said new application is available (Paragraphs 53, 72, 83. Send message indicating new application to mobile device.),

wherein said set of wireless communications devices is a subset of an overall set of wireless communication devices in communication with said server (Paragraphs 0032, 0050-0051. Send message to devices that submitted request or indicated by "Send-to-a-Friend").

As per claim 3, Hofmeister teaches the method of claim 1 wherein said transmitting is conditional upon said new application being added to a group of applications to which access is provided as a whole (Paragraph 0029. Catalog includes currently available applications. Paragraph 0035. Push message for upgrade for application being added to the application catalog.).

As per claim 4, Hofmeister teaches the method of claim 3 wherein said transmitting to said subset of wireless communications devices is conditional upon a grant of access by said subset of wireless communications devices to said group of applications (Paragraphs 0032; 0053. Notify availability of application. The application may be downloaded. Accept application.).

As per claim 5, Hofmeister teaches the method of claim 1 wherein said transmitting is dependent upon receipt of an indication from a human operator in response to said new application being made available at said server (Paragraph 0032; claims 1-2. Receive request from a user. Send message indicating new application is available.).

As per claim 6, Hofmeister teaches the method of claim 1 wherein said transmitting is triggered automatically in response to said new application being made available at said server (Paragraphs 0032, 0050-0051. Send message indicating new application. Paragraph 0073. Automatically generate a push message with list of new applications.).

As per claim 8, Hofmeister teaches the method of claim 1 wherein said message includes a list of applications presently available to said set of wireless communications devices (Paragraph 0073. Generate a push message with list of available applications.).

As per claim 11, Hofmeister teaches the server of claim 9 wherein said transmitting is conditional upon said new application being added to a group of applications to which access is provided as a whole (Paragraph 0029. Catalog includes currently available applications. Paragraph 0035. Push message for upgrade for application being added to the application catalog.).

As per claim 12, Hofmeister teaches the server of claim 11 wherein said transmitting to said subset of wireless communications devices is conditional upon a grant of access by said subset of wireless communications devices to said group of applications (Paragraphs 0032; 0053. Notify availability of application. The application may be downloaded. Accept application.).

As per claim 13, Hofmeister teaches the server of claim 9 wherein said transmitting is dependent upon receipt of an indication from a human operator in response to said new application being made available at said server (Paragraph 0032; claims 1-2. Receive request from a user. Send message indicating new application is available.).

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As per claim 14, Hofmeister teaches the server of claim 9 wherein said transmitting is triggered automatically in response to said new application being made available at said server (Paragraphs 0032, 0050-0051. Send message indicating new application. Paragraph 0073. Automatically generate a push message with list of new applications.).

As per claim 16, Hofmeister teaches the server of claim 9 wherein said message includes a list of applications presently available to said set of wireless communications devices (Paragraph 0073. Generate a push message with list of available applications.).

As per claim 19, Hofmeister teaches the machine-readable medium of claim 17 wherein said transmitting is conditional upon said new application being added to a group of applications to which access is provided as a whole (Paragraph 0029. Catalog includes currently available applications. Paragraph 0035. Push message for upgrade for application being added to the application catalog.).

As per claim 20, Hofmeister teaches the machine-readable medium of claim 19 wherein said transmitting to said subset of wireless communications devices is conditional upon a grant of access by said subset of wireless communications devices to said group of applications (Paragraphs 0032; 0053. Notify availability of application. The application may be downloaded. Accept application.).

As per claim 21, Hofmeister teaches the machine-readable medium of claim 17 wherein said transmitting is dependent upon receipt of an indication from a human operator in response to said new application being made available at said server (Paragraph 0032; claims 1-2. Receive request from a user. Send message indicating new application is available.).

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As per claim 22, Hofmeister teaches the machine-readable medium of claim 17 wherein said transmitting is triggered automatically in response to said new application being made available at said server (Paragraphs 0032, 0050-0051. Send message indicating new application. Paragraph 0073. Automatically generate a push message with list of new applications.).

As per claim 24, Hofmeister teaches the machine-readable medium of claim 17 wherein said message includes a list of applications presently available to said set of wireless communications devices (Paragraph 0073. Generate a push message with list of available applications.).

As per claim 25, Hofmeister teaches the method of claim 1 wherein said set of wireless communication devices is associated with a group of applications and said transmitting is conditional upon said new application being added to said group of applications (Paragraph 0035. Send message in response to upgrade becoming available. Paragraph 0073. Automatically generate a push message with list of new applications.).

As per claim 26, Hofmeister teaches the machine-readable medium of claim 17 wherein said computing device is said server (Paragraphs 0039; 0049. Server computer.).

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofmeister, in view of Mayer, US Publication #2005/0055687 (Mayer hereinafter).

As per claim 7, Hofmeister does not specifically teach the method of claim 1 wherein said message is an eXtenstible Markup Language (XML) message.

Mayer teaches a similar invention for transmitting a message when updated applications is available, wherein said message is an eXtenstible Markup Language (XML) message (Paragraph 0007).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the message to be an XML message. The motivation for the suggested combination is that Mayer's teachings would improve Hofmeister's teachings by providing the message in a common format that may be understood by different devices and applications. Furthermore, Mayer's teachings would enable generic notification of updates of different applications (Paragraphs 0011-0012).

As per claim 15, Hofmeister does not specifically teach the server of claim 9 wherein said message is an eXtenstible Markup Language (XML) message.

Mayer teaches a similar invention for transmitting a message when updated applications is available, wherein said message is an eXtenstible Markup Language (XML) message (Paragraph 0007).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the message to be an XML message. The motivation for the suggested combination is that Mayer's teachings would improve Hofmeister's teachings by providing the message in a common format that be may understood by different devices and applications. Furthermore, Mayer's teachings would enable generic notification of updates of different applications (Paragraphs 0011-0012).

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As per claim 23, Hofmeister does not specifically teach the machine-readable medium of claim 17 wherein said message is an eXtenstible Markup Language (XML) message.

Mayer teaches a similar invention for transmitting a message when updated applications is available, wherein said message is an eXtenstible Markup Language (XML) message (Paragraph 0007).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for the message to be an XML message. The motivation for the suggested combination is that Mayer's teachings would improve Hofmeister's teachings by providing the message in a common format that may be understood by different devices and applications. Furthermore, Mayer's teachings would enable generic notification of updates of different applications (Paragraphs 0011-0012).

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Joo whose telephone number is 571 272-3966. The examiner can normally be reached on Monday to Friday 7 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J. J./  
Examiner, Art Unit 2454

/NATHAN FLYNN/  
Supervisory Patent Examiner, Art Unit 2454

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